

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

UNITED KEETOOWAH BAND OF CHEROKEE INDIANS IN OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	No. 06-906 L
)	Judge Thomas C. Wheeler
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

**PARTIES' JOINT STIPULATION REGARDING CERTAIN FACTS RELATING TO
DEFENDANT'S MOTION TO DISMISS PURSUANT TO 28 U.S.C. § 1500**

To aid this Court in the efficient and effective resolution of Defendant's motion, Plaintiff United Keetoowah Band of Cherokee Indians and Defendant United States of America agree and stipulate to the following facts relating to Defendant's motion to dismiss pursuant to 28 U.S.C. § 1500:

1. As to the time of filing of the complaint in this case and of the complaint in Plaintiff's companion case, United Keetoowah Band of Cherokee Indians in Oklahoma v. Salazar, No. 06cv00559-RAW (E.D. Okla.), the Court needs to determine only the times at which Plaintiff delivered its complaints to this Court and to the United States District Court for the Eastern District of Oklahoma.

2. Rule 5(e) of the Rules of the United States Court of Federal Claims (RCFC) (2006) stated the following:

Filing With the Court Defined. The filing of papers with the court as required by these rules shall be made by filing them with the clerk

of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the clerk's office. . . . The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules.

3. The Court of Federal Claims amended RCFC 5(e) on November 15, 2007, and November 3, 2008. The current version of the rule provision on filing, set forth in RCFC 5(d)(2), states the following:

How Filing Is Made--In General. A paper is filed by delivering it:
(A) to the clerk; or
(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

4. Rule 5(d)(2) of the Federal Rules of Civil Procedure (Fed. R. Civ. Pro.) provides the following:

How Filing Is Made — In General.
A paper is filed by delivering it:
(A) to the clerk; or
(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

5. Plaintiff's counsel, McAfee and Taft, PC, sent a package with reference number "28930.00001," by FedEx to the Court of Federal Claims on December 28, 2006. Ex. JS-1 (Certification of Business Records of FedEx Express); Ex. JS-2 (Courtesy Ship to Detail with Reference, 12/28/2006).

6. FedEx delivered that package to the office of the Clerk of this Court on December 29, 2006, at 9:01 a.m. EST. (or 8:01 a.m. CST). Ex. JS-1.

7. The U.S. Court of Federal Claims in Washington, D.C., received Plaintiff's

Complaint in this action on December 29, 2006. Ex. JS-3 (Docket Sheet herein).

8. At 10:44 a.m. EST (or 9:44 a.m. CST), on December 29, 2006, “Triena,” with the telephone number “235-9621,” contacted Ala Carte Courier Service, Inc. of Oklahoma City, Oklahoma, about a pick-up from shipper “Macaffee & Taftee,” that would be ready at “1:00,” for delivery to consignee “Muskogee Court Clerk, 101 N. 5th St., 918-684-7290.” Ex. JS-4 (call log of Ala Carte Courier Service, Inc.).

9. Ala Carte Courier Service, Inc., delivered a package from “McAfee & Taft, Donna Hinkle, 28930/00001” consignor “Trina K. Harper,” to “Court Clerk, 101 N 5th St Muskogee, OK 74402, (918) 684-7920,” consignee “J. Brown,” on December 29, 2006. Ex. JS-5 (receipt of Ala Carte Courier Service, Inc.).

10. The U.S. District Court for the Eastern District of Oklahoma in Muskogee, Oklahoma, received Plaintiff’s district court complaint on December 29, 2006. Ex. JS-6 (Docket sheet for United Keetoowah Band of Cherokee Indians v. Kempthorne, No. 06-cv-559-RAW (E.D. Okla. Dec. 29, 2006)).

11. The reference number “28930.00001” is McAfee & Taft’s internal client/matter reference number for the United Keetoowah Band of Cherokee Indians in Oklahoma. Ex. JS-7 (McAfee & Taft Invoice #251158 to United Keetoowah Band of Cherokee, dated March 15, 2007).

Respectfully submitted this 27th day of February, 2009,

s/ James C. McMillin

JAMES C. MCMILLIN

McAfee & Taft A Professional Corporation
10th Floor, Two Leadership Square
211 North Robinson
Oklahoma City, Oklahoma 73102-7103
Tel: (405) 235-9621

Fax: (405) 235-9436

james.mcmillin@mcafeetaft.com

Attorney of Record for Plaintiff

s/ James M. Upton

(signed by filing attorney with permission)

James M. Upton

United States Department of Justice
Environment and Natural Resources Division
Natural Resources Section
P.O. Box 663

Washington, D.C. 20044-0663

Tel: (202) 305-0482

Fax: (202) 353-2021

james.upton@usdoj.gov

Attorney of Record for Defendant
OF COUNSEL:

JARED S. PETTINATO

ANTHONY P. HOANG

United States Department of Justice
Environment and Natural Resources Division
Natural Resources Section

P.O. Box 663

Washington, DC 20044-0663

Tel: (202) 305-0203

Tel: (202) 305-0241

Fax: (202) 353-2021

THOMAS BARTMAN

Office of the Solicitor

United States Department of the Interior
Washington, DC 20240

REBECCA M. SALTIEL

THOMAS KEARNS

Office of the Chief Counsel

Financial Management Service

United States Department of the Treasury
Washington, D.C. 20227